

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 February 2025

DOCKET NUMBER: AR20240007105

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show:

- an upgrade of his under honorable conditions discharge to honorable
- a change in his separation code
- a change in his narrative reason for separation

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for The Review of Discharge from the Armed Forces of the U.S.)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- NGB Form 22 (Report of Separation and Record of Service), 31 October 2003
- NGB Form 23B (Army National Guard Retirement Points History Statement)
- DA Form 2-1 (Personnel Qualification Record)
- Department of Veterans Affairs (VA) Letter, 22 April 2024

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states he suffers from post-traumatic stress disorder (PTSD), he is 100% disabled, and has other handicaps. He was subjected to discrimination and mistreatment by superiors, including sexual assault. He received an honorable discharge from the Army National Guard (ARNG). The applicant also marked "other mental health," on his DD Form 149 as a condition related to his request.
3. The applicant provides:

a. NGB Form 23B, prepared on 17 May 2013 for the period 1 June 1986 to 31 October 2003.

b. A letter from the VA dated 22 April 2024 shows the applicant is receiving 100% service-connected disability compensation.

4. A review of the applicant's record shows:

a. He enlisted in the Regular Army on 4 November 1986.

b. On 30 November 1988, he received nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ) in that he did on or about 30 November signed in and changed into civilian clothes, went to sleep, and made a false statement that he was cleaning the room with the lights off. His punishment consisted of 5 days extra duty; and 5 days restriction. The continuation sheet shows:

(1) the applicant received a lawful order from Staff Sergeant (SSG) B\_\_\_\_, to retrieve all of his missing equipment, on or about 13, 15, and 18 July 1988, and willfully disobeyed the same. This is a violation of Article 91, UCMJ.

(2) the applicant received a lawful order from SSG B\_\_\_\_, to remove a sleeping bag from his wall locker, on or about 18 July 1988, willfully disobey the same. This is a violation of Article 91, UCMJ.

(3) the applicant on or about 18 July 1988, with intent to deceive, made to SSG B\_\_\_\_, an official statement, to wit: That his Kevlar helmet was at the Chapel, which statement was false. This is a violation of Article 107, UCMJ.

c. The DA Form 20 (Personnel Qualification Record) shows the applicant served in Germany from 26 April 1987 to 26 February 1989.

d. The applicant's record is void of the specific facts and circumstances surrounding his discharge processing.

e. On 27 February 1989, he was discharged with an under honorable conditions (General) characterization of service. His DD Form 214 shows he completed 2 years, 3 months, and 24 days of active service. He was assigned separation code JKM and the narrative reason for separation listed as "Misconduct – Pattern of Misconduct," with reenlistment code 3. It shows he was awarded or authorized:

- Army Service Ribbon
- Overseas Service Ribbon
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16)

- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)
- e. He was issued two NGB Form 22, that show:
- he enlisted in the Alabama ARNG on 7 August 1993, and was honorably discharged on 15 February 1994
  - he enlisted in the Ohio ARNG on 1 November 2002 and was honorably discharged on 31 October 2003
5. On 7 January 2025, the U.S. Army Criminal Investigation Division (CID) provided information for the processing of this case. CID conducted a search of the Army criminal files indexes regarding the applicant's claims regarding sexual assault and no records were found.
6. There is no indication that the applicant requested an upgrade of his discharge from the Army Discharge Review Board within its 15-year statute of limitations.
7. By regulation (AR 635-5), the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designator (SPD) Codes).
8. By regulation (AR 635-5-1), provides separation program designators (SPD) are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in block 28 of the DD Form 214 exactly as listed in the tables. SPD code JKM is listed with narrative reason "Misconduct-Pattern of Misconduct," under regulatory authority AR 635-200, paragraph 14-5.
9. By regulation, (AR 635-200), an individual will be considered for discharge and the case initiated and processed through the chain of command to the general court-martial convening authority when initially convicted by civil authorities, or action is taken which is tantamount of a finding of guilty.
10. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

## 11. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) discharge, separation code, and narrative reason for separation. He contends he experienced MST and resulting mental health conditions including PTSD that mitigate his misconduct. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in the Regular Army on 04 November 1986; 2) The applicant accepted nonjudicial punishments (NJPs) on 30 November 1988 under Article 15 for two counts of making false statements, two counts of willfully disobeying lawful orders on or about 13, 15, and 18 July 1988; 3) The applicant's record is void of the specific facts and circumstances surrounding his discharge processing; 4) The applicant was discharged on 27 February 1989 for a pattern of misconduct with an under honorable conditions (general) characterization of service. He completed 2 years, 3 months, and 24 days of active service; 5) Following this period of service, the applicant served in the Alabama Army National Guard from 07 August 1993 to 15 February 1994 and the Ohio Army National Guard from 1 November 2002 to 31 October 2003, both resulting in honorable discharges.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) and VA documentation provided by the applicant were also examined. No additional medical records were provided for review. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced MST and mental health conditions including PTSD while on active service, which mitigates his misconduct.

d. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD while serving in the Regular Army or during his service in the Army National Guard.

e. A review of JLV provided evidence the applicant was engaged with the VA initially for homelessness resources and medical and mental health treatment. He has been connected with the VA since 01 January 2016 until the present day primarily for the treatment of PTSD, delusional disorder, , and numerous medical concerns including orthopedic and neurological disorders. His VA Compensation and Pension Evaluation (C&P) examination (28 December 2023) resulted in the diagnosis of service-connected PTSD (100%SC) as a direct result of MST, which he reported occurred during basic training and while he was stationed in Germany.

f. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence the applicant has been diagnosed with service-

connected PTSD as a result of MST, and he has also been diagnosed with other mental health conditions including delusional disorder by the VA. While this is sufficient evidence to partially mitigate some of the applicant's misconduct. There is insufficient evidence surrounding the events that resulted in the applicant's discharge to provide a complete and appropriate opinion on possible mitigation as the result of his reported mental health condition or experience.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced MST and resultant mental health conditions including PTSD, which mitigate his misconduct. The applicant has been diagnosed with delusional disorder by the VA, and he has been diagnosed with service-connected PTSD as a result of MST by the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced MST and resultant mental health conditions including PTSD while on active service, which mitigate his misconduct. The applicant has been diagnosed with service-connected PTSD as a result of MST by the VA.

(3) Does the condition or experience actually excuse or mitigate the misconduct? Partially, there is sufficient evidence the applicant has been diagnosed with service-connected PTSD as a result of MST. The applicant did engage in some erratic behavior, which can be a natural sequelae to MST and PTSD. However, there is no nexus between the applicant's experience of MST and resultant mental health conditions including PTSD and his misconduct of intent to deceive/making false statements in that this type of misconduct is not a part of the natural history or sequelae of the applicant's MST and resultant mental health conditions including PTSD; 2) the applicant's MST and resultant mental health conditions including PTSD do not affect one's ability to distinguish right from wrong and act in accordance with the right. In addition, there is insufficient evidence surrounding the events that resulted in the applicant's discharge to provide a complete and appropriate opinion on possible mitigation as the result of his reported mental health condition or experience. However, per Liberal Consideration, the applicant's experience of MST and resultant mental health conditions alone is sufficient for the board's consideration.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the pattern of misconduct leading to the applicant's separation and the findings in the medical review of only partial mitigation, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

//SIGNED//  
X \_\_\_\_\_

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Army Regulation 635-5 (Separation Documents), in effect at the time, states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. The information entered thereon reflects the conditions as they existed at the time of separation. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designator (SPD) Codes).
3. Army Regulation 635-5-1 (Separation Program Designator Codes) provides separation program designator (SPD) codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in block 28 of the DD Form 214 exactly as listed in the tables. SPD code JKM is listed with narrative reason "Misconduct-Pattern of Misconduct," under regulatory authority AR 635-200, paragraph 14-5.
4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
  - a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the member's service generally has met, the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.
  - b. Paragraph 3-7b states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
  - c. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct

when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally considered appropriate. However, the separation authority could direct a general discharge if such was merited by the Soldier's overall record.

5. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations, and mitigating factors, when taking action on applications from former service members administratively discharged under other than honorable conditions, and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

6. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole, or in part, to: mental health conditions, including PTSD; TBI; sexual assault; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria, and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for that misconduct which led to the discharge.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NR) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses

or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

8. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//